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IN THE

Supreme Court of the United States

October Term, 1955.
Nos. 308, 309, 310

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIM SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY, PHILIP MARSHALL CONNELLY and FRANK CARLSON,

Petitioners,

vs.

UNITED STATES OF AMERICA,

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE.

The undersigned as counsel for the American citizens whose names are hereto attached (Appendix "A") are residents of the State of California, deeply concerned with the proper administration of criminal justice in the federal courts upon which the liberties of all persons depend. Since the sufficiency of the evidence to establish the charge made against these accused is one of the points pressed upon their petition for writ of certiorari, we deem it significant that much of the testimony adduced at the trial herein by the prosecution admittedly came from the lips of paid government agents. The use of paid informers

has become a matter of national concern, and grave doubt is being expressed by many responsible citizens as to the validity of convictions based on evidence which emanates from such biased sources. A recent editorial in the *New York Times* (July 8, 1954), states:

> "On the first page of this newspaper yesterday a dispatch from Washington began: 'The cult of the paid informer is growing in the Federal Government.' The process of informing is—as Justice Holmes once said of the not-unrelated art of wiretapping—a 'dirty business.' The tattletale of childhood becomes in adult life the gossip, the keyhole-peeper, the tipster, the informer, the agent. Paid or unpaid, it is a distasteful occupation, and one that does not become well a free society. It implies accusation without proof, defamation without responsibility. Yet there always have been and there always will be informers, and it is not too much to say that no police agency on earth has ever operated successfully without them.
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> * * * * * * * *
>
> "The real problem of the informer arises not in this sphere but rather when questions of a man's personal life, of his thoughts, opinions or political activities are under scrutiny. Here is where employment of the informer may become dangerous to individual rights and liberties. The informer smacks of the police state; and we think that most Americans instinctively shrink from his use. It is reasonable to suppose that the professional, paid informers, such as those on the rolls of the Justice Department, who can be said to make their living at this game, feel the necessity of continuing to 'produce' if they are not to give up their lucrative occupation.

"Informers undoubtedly have their uses in uncovering elements of the Communist conspiracy; but it is essential that they be employed with the greatest judgment and discretion. Some informers have been caught in direct contradictions of testimony that smell strongly of perjury. If the Justice Department feels it essential to use informers in the conduct of its anti-Communist prosecutions under the law, it has the unmistakable duty to follow up relentlessly any indication that they may not be telling the truth. As the law-enforcement agency of our Government, the Justice Department has a primary obligation to maintain its own integrity and that of its agents."

In a case decided on April 2, 1955, the conviction of two persons in a Smith Act prosecution in New York was set aside because of the perjured testimony of one of the prosecution witnesses. District Judge Edward J. Dimock states in his opinion, *United States v. Flynn, et al.*, 130 Fed. Supp. 412, 416:

"The Matusow who first brought his tales to the Government and who was being prepared to act as a witness by the Government lawyers and who was on the witness stand in the trial was a man without regard for the truth, with a passion for the limelight and with the need for a few dollars."

Law and history attest to a universal aversion to the paid informer or professional witness. In every age they have been found unworthy of belief. We set forth here only a few of the many observations made by men of principle, learning and wisdom concerning the vice of accepting the testimony of such persons:

"Men may be without restraints upon their liberty; they may pass to and fro at pleasure; but if their

steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators, who shall say they are free? . . . The freedom of a country may be measured by its immunity from this baleful agency. Rulers who distrust their own people must govern in a spirit of absolutism; and suspected subjects will be very sensible of their bondage."

May, *Constitutional History of England* (1880), Vol. 2, p. 275.

In the 17th century, many persons went to their death because of the testimony of one person who swore that a "Popish" plot was afoot forcibly to overthrow the English government.

"The career of Titus Oates furnishes the severest indictment of England in the latter half of the seventeenth century. Of all the long line of liars in human history, he must surely be the one for whom the least shadow of excuse is possible That such a stupendous monster of mendacity should have been able to flourish for years at the public expense and high in the public esteem, trading upon the lowest instincts of bigotry, and dealing out death to innocent people without a grain of compunction, is a humiliating thought to those who would think well of their ancestors."

Sergeant, *Liars and Fakers* (Lond.), p. 130.

Commenting on the informer as a "recurrent feature of all prosecutions for opinion," Professor Zechariah Chaffee, of Harvard Uinversity, observes:

"In 1692 the chief accusers of the Salem witches were a club of young girls who sent more than one old woman to her death by telling how they had seen

her drink their blood or cause a yellow bird to sit on the minister's hat where it hung on a peg in the pulpit."

Chaffee, *Freedom of Speech* (1920), p. 356.

When the Sedition Act of 1798 was passed (only to be repudiated two years later by the people), Edward Livingston in Congress uttered a warning that has special force today:

"The country will swarm with informers, spies, delators, and all the odious reptile tribe that breed in the sunshine of despotic power. The hours of the most unsuspected confidence, the intimacies of friendship, or the recesses of domestic retirement afford no security."

See Miller, *Crisis in Freedom* (1951).

During the infamous Palmer raids of the 1920's a courageous judge stated:

"I cannot adopt the contentian that government spies are any more trustworthy, or less disposed to make trouble in order to profit therefrom, than are spies in private industry . . . A right-minded man refuses such a job. The evil wrought by the spy system in industry has, for decades, been incalculable . . . It destoys trust and confidence; it kills human kindness; it propagates hate."

Anderson, J., in *Colyer v. Skeffington*, 265 Fed. 1769 (D. C., Mass., 1920).

The danger of the informer derives from the very nature of his employment. The use of his testimony, particularly in the sensitive areas of opinion and expression, menaces with corrosion the very processes of justice:

". . . when the amount of his pay depends upon the extent of his employment, and the extent of his

employment depends upon the discoveries he is able to make, then that man becomes a dangerous instrument."

Sopwith v. Sopwith, 4 Sw. & Tr. 243, 247; 164 Eng. Repr. 1509.

Conclusion.

This court has stated:

"Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence."

McNabb v. United States, 318 U.S. 332, 340.

It is in that spirit that this motion is made. There is urgent need for this Court to halt the erosion of an essential liberty—a fair trial by due process of law and without the blight of the testimony of irresponsible paid informers.

Wherefore, your movants, *amici curiae*, respectfully request leave to file a brief *amici curiae* for the reasons and on the grounds hereinabove stated.

Respectfully submitted,

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ARTHUR A. BROOKS, JR.,
of Beverly Hills, California;

RICHARD W. PETHERBRIDGE,
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APPENDIX "A."

Names of Amici Curiae.

Dr. Linus Pauling	Professor California Institute of Technology. Nobel Prize Winner.
Milnor Alexander	Peace Education Secretary, American Friends Service Committee, Pasadena.
Beach Langston	Associate Professor California Institute of Technology.
Dr. George Streisinger.	Research Fellow California Institute of Technology.
	President, California Institute of Technology Chapter Federation of American Scientists.
Dr. D. R. Sharpe	Emeritus Executive Secretary Cleveland Baptist Association.
Dr. Edna Griffin	
Reverend A. A. Heist	
Bishop Walter Mitchell	Retired Bishop of Arizona.
Hugh Anderson	Member of Board of Southern California, A. C. L. U.
	Member of Board of L. A. County Conference on Community Relations.
Mrs. Helen A. Beardsley	
Eleanor Ashkenazy	Publicity; American Friends Service Committee, Pasadena.
Miss Theodora Ninesteel	Executive Director University YWCA, Westwood.
Dr. Stuart Innerst	Minister, First Friends Church, Pasadena.
Jack Y. Berman	Jewish Community leader.
George M. Day	Professor Emeritus of Sociology, Occidental College.
Gale Seaman	Advisory Board, Southern California A. C. L. U.
Merrill O. Brininstool	Vice President Walter Rauschenbusch Fellowship of Southern California.
	Pastor, Wilshire Baptist Church.
George P. Mangold	Professor, Sociology, U. S. C. (Retired).
Joseph Johnson	Architect, Pasadena California

Affiliations noted for identification.

Signers are acting only as individuals.